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# Serbia: Elusive Citizenship in an Elusive Nation-State

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Working Paper 2010/08



European Research Council



University of Edinburgh, School of Law  
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia  
(CITSEE)

**Serbia: Elusive Citizenship in an Elusive Nation-State**  
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## **Serbia: Elusive Citizenship in an Elusive Nation-State**

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### **Abstract**

This paper focuses on the current citizenship regime in Serbia, with an emphasis on the problematic nexus between citizenship, nation-formation, and state-building. Starting with an overview of main historical developments (with special attention placed on the controversial 1996 Law on Citizenship of the Federal Republic of Yugoslavia), the study moves toward a thorough analysis of the current citizenship regime. Of particular significance is the return to an ethnic framework in the 2006 Serbian Constitution and the current Serbian Law on Citizenship, and the implications this may have for Serbia's relationships with its neighbours, especially in those states with a considerable Serb minority. At the end, the report sheds more light on current debates regarding an ethnocentric definition of citizenship, dual citizenship, Kosovo residents, and refugees.

### **Keywords:**

Serbia, citizenship, Western Balkans, Yugoslavia, Kosovo

## **1 Introduction**

Serbia has been an independent state for fewer than four years but its problems of nation-state building have spanned over almost two centuries. After becoming independent for the first time in the modern era (Principality/Kingdom, 1817-1918), Serbia became a part of four South-Slav/Yugoslav states.<sup>2</sup> Serbia again became independent only after secession of Montenegro from the State Union of Serbia and Montenegro in 2006. In the words of a prominent historian Stevan Pavlowitch (2002) 'Serbia emerged, disappeared and kept moving' through centuries and, therefore, there has never been a continuous community or territory with that name. Even today, according to Pavlowitch, different sections of Serbian people differ amongst themselves almost as much as they differ from other south-Slav peoples. In this context, the question of citizenship is firmly related to elusive notions of Serb nation and Serbian state – both of which are still in the process of consolidation and re-construction.

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<sup>2</sup> Kingdom of Yugoslavia, 1918-1941; Federal People's Republic of Yugoslavia, 1945-1963 and Socialist Federal Republic of Yugoslavia, 1963-1992; Federal Republic of Yugoslavia, 1992-2003; State Union of Serbia and Montenegro, 2003-2006.

Although Serbia is now a diverse multi-ethnic country with a dominant ethnic Serb population, the notions of the Serbian state (identity and territory) and of Serb ethnicity (the trans-border kin population) remain contested and fluid. Following the wars in Croatia and Bosnia and Herzegovina the relationship between Serb minorities in those two countries with Serbia is still influenced by the issue of dual citizenship, a large number of refugees expected either to gain Serbian citizenship or to return to Croatia and Bosnia-Herzegovina, and the newly formulated concept of 'the Serbs in the region'. Moreover, following the independence of Montenegro, a large number of Serbs remained in Montenegro and a large number of Montenegrins in Serbia, with an unresolved dual citizenship status due to the incompatibility of two existing laws on citizenship. In addition, the current Serbian law offers preferential and apparently ethnic-based citizenship rights to a sizeable Serb Diaspora outside the Western Balkan region.

In 2008, the Autonomous Province of Kosovo and Metohija of the Republic of Serbia (under UN protection since 1999) proclaimed independence. The Serbian state has not recognised the newly established Republic of Kosovo and in its constitution and laws still considers this territory to be the Autonomous Province of Kosovo and Metohija. In reality, the Serbian state has not had formal sovereignty over the province of Kosovo and Metohija since 1999 and it has not provided equal citizenship rights for Kosovo residents, especially ethnic Albanians, for at least two decades, following the abolition of Kosovo autonomy in 1990. Despite the claim that Kosovo legally belongs to Serbia, the Serbian government agreed to exclude 'Serbian citizens' with residence in Kosovo from the new EU visa liberalisation regime provided for Serbian citizens in December 2009. The vast majority of Serbs in Kosovo continue to show allegiance to Serbia rather than to the Kosovan state, a certain percentage of Albanians in Kosovo still use Serbian/Yugoslav passports, and a particular parallel system of governance is still in place in the Serb-dominated part of Kosovo. To complete an already complex picture that renders many challenges to the consolidation of Serbia's citizenship regime, the internal territorial organisation of the country remains problematic pending the resolution of the competences of another Serbian autonomous province – Vojvodina.

## **2 Historical background**

### **2.1 Serbia before socialist Yugoslavia, 1804-1941**

The development of the modern Serbian<sup>3</sup> state started in the early nineteenth century on the territory of today's central Serbia (Jelavich & Jelavich 1977; Gleny 1999). Two national liberation uprisings against the Ottoman Empire in 1804 and 1814 led to limited sovereignty for the nucleus of the modern Serbian state. Serbia emerged as an

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<sup>3</sup> Henceforth, the terms 'Serbian' will be used to refer to the state and 'Serb' to ethnicity.

internationally recognised state in 1878 and evolved into a kingdom in 1882. Moreover, the Serbian political elite established a more expansionist strategy which aimed at the integration of the dispersed Serb population into one large Serbian state.<sup>4</sup> In 1833 and in 1878, Serbia integrated several southern districts, and during the two Balkan Wars (1912-13) the territory of Kosovo and a part of Raška and Macedonia. These expansions more than doubled the size of the state, but the intention of the Serbian political elite was to continue integrating, at least, those parts of Bosnia and Herzegovina populated by Serbs. This broader Serbian nation-state was meant to combine territories that had been ruled by medieval Serb kings (and an emperor)<sup>5</sup> and those where Serb people lived or had migrated to (e.g. Vojvodina). Due to the differentiation of population according to religious affiliation in the Ottoman Empire, it was the Serbian Orthodox Church that produced the initial definition of Serb ethnicity/nationality. That definition was theocratic and profane and it implied that a Serb can only be an Orthodox Christian –the ethnicity would also change if the religion changed. This peculiarity led to a major problem of distinguishing between Serbs, Croats, Bosniaks and other ethnicities, and was often a basis for political manipulation in the course of nation formation.

The discrepancy between this concept of nation and the intention to integrate all Serbs into one state, led to two mutually exclusive conceptions of Serbian citizenship. The first was based on the existing, continuously expanding Serb-dominated state, but the problem was that the integration of all Serbs into one state could have been achieved only through war and ethnic and religious strife. The second related to an eventual supra-national South-Slav state in which all Serbs would come together and co-exist with other closely related and linguistically similar South-Slav ethnicities. The first conception of the nation state was used in the Serbian Kingdom and after several transformations it combined the French idea of liberation and people's government with the German idea of unification through vernacular language, common history, and romantic rhetoric (Pavlowitch 2002). This idea dominated until the First World War and was expressed in several Serbian Constitutions (culminating in that of 1903) and in the Civil Code of Serbia (1844). As the state territory increased through wars, the new population was integrated into Serbian citizenship primarily by post-war treaties and peace agreements (Miletić 2005: 15-16) which led to large groups of people being included into Serbian citizenship overnight. The ethno-centric concept of citizenship was based on the dominance of the Serb nation, while other ethnicities (the largest being Albanians and Macedonians) were given secondary status and/or often forced to assimilate.

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<sup>4</sup> This initially referred to Serbs from Kosovo and Raška (in Ottoman Empire), and from Vojvodina and Bosnia-Herzegovina (in Austria-Hungary) – later also Serb population in Croatia.

<sup>5</sup> The Serbian medieval kingdom emerged in the ninth century from Raška (south-west Serbia and northern Montenegro) into central Serbia, Kosovo, and Macedonia. The Empire (1331-1355) included also the territory of modern Greece. After the collapse of the empire, the leftover lordships were defeated by the Ottomans in 1389 at the Kosovo Polje Battle and integrated into the Ottoman Empire by the fifteenth century.

The second concept became more prominent in Serbia during the First World War when Serbian Government realised that Serbs could effectively be integrated only within a broader and more diverse South-Slav state.<sup>6</sup> The idea of a common state derived from previous Illyrian and Yugoslav movements for unification of South-Slav 'tribes' and the understanding that all those tribes shared the same ethnic, linguistic and historical legacy. The Kingdom of Serbs, Croats and Slovenes (later renamed Yugoslavia) came into being in December 1918. Nevertheless, there was a deep and chronic misunderstanding of the practical implications of the common citizenship<sup>7</sup> and this might have been one of the reasons for the delay in adoption of the Law on Citizenship in the first Yugoslav state. From 1918 to 1928 the old laws on citizenship of the former Austro-Hungarian and Ottoman empires remained in force (Štiks 2010: 4) producing a very chaotic and fragmented citizenship regime.

It is indicative that the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes of 1928<sup>8</sup> coincided with increased domestic ethnic strife that almost led to state collapse. As a remedy, the Serbian king suspended the parliament, installed a royal dictatorship, and renamed the state the Kingdom of Yugoslavia in 1929. This supported an approach to the citizenship law that introduced a unified Yugoslav citizenship that was expected to prevent ethnic disintegration and establish a cohesive Yugoslav nation. As would often be the case in later laws, this law used a transitional section (paras. 53-55) to address the most problematic issue, that of determining the pool of citizens. This particular law did that retroactively: it established that citizens of the Kingdom of Yugoslavia from 1918 to 1928 had been the following groups (Miletić 2005: 15-16):

- a) those who were citizens of the Kingdom of Serbia, the Kingdom of Montenegro, or the Kingdom of Croatia and Slavonia on the day of unification (1 December 1918) – if they had not lost it as a result of peace agreements,
- b) those that had been accepted into public service,
- c) those that received citizenship in peace agreements with Austria, Hungary, and Bulgaria.

The law officially expired on 6 April 1941, but it was used again after the Second World War as the framework for determining the citizenship of those born on the territory of former Yugoslav Kingdom between 6 April 1941 and 28 August 1945. The law was based on *zavičajnost* [domicile] in one of municipalities and it did not allow dual or multiple citizenship.

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<sup>6</sup> In the new state Serbia ceased to exist as an entity due to the unitary nature of the new Yugoslav state formed under the Serbian crown.

<sup>7</sup> The two main approaches were promoting a unitary nation and the (con)federal union of the three tribes.

<sup>8</sup> Official Gazette of the Kingdom of Serbs, Croats and Slovenes, 245/1928.



## 2.2 Serbia in socialist Yugoslavia – 1945-1992

Learning from the lessons of the Kingdom of Yugoslavia, the second Yugoslavia was established as a federal state that recognised ethnic identities. This led to a crucial innovation: adding citizenship to attributes of 'statehood' of the new federal units (Štiks 2010: 6). The consequence was 'bifurcated citizenship' – a simultaneous existence of federal and republican citizenship with an unclear supremacy between them (Štiks 2010). The existence of common, federal citizenship provided the same rights for all citizens of the federation and in that sense, republican citizenships did not have any practical value. However, the very existence of republican citizenships was meant to legitimise the sovereign, constitutional character of the republics (Pejić 1995: 6). There is no consensus on the actual nature of the bifurcated citizenship (Štiks 2010: 7), but it seems plausible to argue that the relationship between federal and republican citizenships evolved over time. Finally, with the 1976 federal law, republican citizenship gained practical dominance over federal citizenship (Štiks 2010: 7; Rakić 1998: 59) when the competences for the implementation of citizenship legislation were largely transferred to the republican level. Nevertheless, bifurcated citizenship remained elusive even in the last version of the law, which, despite institutional changes, continued to claim the identical nature of the two citizenships.

The first Federal Yugoslav law on citizenship<sup>9</sup> of 1945/1946 was intended to determine the new pool of citizens after the Second World War. The law established legal continuity and emphasised the principle of descent (*ius sanguinis*) with a prominent ethnocentric aspect. In addition to those who had the citizenship of the Kingdom of Yugoslavia in accordance with the 1928 Law (including those born during the war) and those permanently residing in the territories that Yugoslavia incorporated through war and peace agreements, citizens were also those belonging to (or born and raised by a parent belonging to) one of constitutive South-Slavic ethnicities or nations [*narodi*],<sup>10</sup> provided they did not have another citizenship. Another law – the Law on Deprivation of Citizenship<sup>11</sup> (1946-1962) – regulated those who lost citizenship. Here, the focus was on the former Royal Yugoslav Army, and on 'domestic traitors' and disloyal citizens. According to the first federal law, acquisition of citizenship also occurred by origin, by birth, by naturalisation and under international treaties. There were two further federal laws,<sup>12</sup> but the basis for acquisition remained essentially the same despite some minor terminological change (Miletić 2005: 18). Each of the laws followed constitutional changes – in 1945, 1963,

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<sup>9</sup> Official Gazette of the Federal People's Republic of Yugoslavia, 54/1946 with the changes: 104/1947, 88/1948, 105/1948.

<sup>10</sup> The notion of *narodi* was used inconsistently: it referred to republican nations (citizens of republics), but also to trans-republican ethnicities and was sometimes used in the singular *narod* [one Yugoslav people].

<sup>11</sup> Official Gazette of the Democratic Federative Yugoslavia, 86/1946 and its termination in Official Gazette 22/1962.

<sup>12</sup> For detailed analysis of the laws see Medvedović (1998: 23-52).

and 1974 - which slightly modified the relationship between the federal and republican level citizenships and competences. While the 1946 law defined both citizenships as existing simultaneously, the 1964 law<sup>13</sup> made republic-level citizenship conditional upon federal citizenship. The 1976 law<sup>14</sup> introduced a mechanism for resolving disputes caused by different republican laws on citizenship (art. 22) and also decentralised competences for the implementation of citizenship regulation to the republics (e.g. registering citizens and issuing passports with their own codes). The federal laws on citizenship were the result of constitutional changes, and attempts to avoid another major, domestic ethnic strife. The consequent 'centrifugal federalism' that over time empowered the republics over the federal level transformed a centralist federation into a confederation (Štiks 2010: 7). Tacit confederalisation was indicated even in the name of the citizenship laws (and related definitions): while the first two laws were laws on 'Yugoslav citizenship' [*jugoslovensko državljanstvo*], the last one became law on 'citizenship of SFR Yugoslavia' [*državljanstvo SFRJ*].<sup>15</sup> This shows that the attempt to create a supra-national concept of a (Yugoslav) nation and citizenship failed and that legal changes facilitated the tacit consolidation of republican statehood.

After each new federal law, the republics changed their own laws on citizenship. Accordingly, Serbia passed the Law on Citizenship of the People's Republic of Serbia of 1950,<sup>16</sup> the Law on citizenship of the Socialist Republic of Serbia of 1965<sup>17</sup> and the Law on citizenship of the Socialist Republic of Serbia of 1979.<sup>18</sup> The 1979 law (as amended in 1983<sup>19</sup>) remained in force until 2004<sup>20</sup> and it deserves further explanation. The first peculiar aspect of that law is that it was adopted much later than other republican laws (i.e. the time lapse after the federal law change was much greater) and in the meantime no application for acquisition or termination was processed in Serbia. The reasons for the delay were the extensive negotiations between the republican government and the two autonomous provincial governments in Vojvodina and Kosovo (Miletić 2005: 20). The status of two sub-republican territories has changed considerably over time<sup>21</sup> but with the 1974 Constitution, they received a pool of competences that almost gave them equal

<sup>13</sup> Official Gazette of Federal People's Republic of Yugoslavia, 38/1964, with corrections: 42/1964.

<sup>14</sup> Official Gazette, Socialist Federal Republic of Yugoslavia, 58/1976.

<sup>15</sup> While this may seem as minor change regarding semantics, in accordance with the Yugoslav legal tradition the difference was considerable.

<sup>16</sup> Official Gazette of the People's Republic of Serbia, 5/1950.

<sup>17</sup> Official Gazette of the Socialist Republic of Serbia, 13/1965.

<sup>18</sup> Official Gazette of the Socialist Republic of Serbia, 45/1979.

<sup>19</sup> Official Gazette of the Socialist Republic of Serbia, 13/1983.

<sup>20</sup> It should be noted that republican laws in all Yugoslavias did not regulate the whole citizenship policy – there were additions to federal laws. The first Serbian law that regulated the whole policy is the current law (2004/07).

<sup>21</sup> In 1946 Kosovo and Metohija was an Autonomous Region [*oblast*] and Vojvodina was an Autonomous Province [*pokrajina*]. In 1953, both were demoted to districts [*okrug*], only to become Autonomous Provinces in 1963.

powers to the Yugoslav republics. The two Socialist Autonomous Provinces (SAPs) had constitutions, but did not have their own citizenship laws, making the citizenship policy in Serbia highly complex. Before 1979, the Federal Secretariat for the Interior decided upon citizenship applications. The Republican Secretariat for the Interior in Serbia was in charge of collecting and processing applications outside SAPs. On the territory of SAPs, the provincial secretariats for the interior were responsible for collecting and processing the applications, with the Republican Secretariat operating as a filter between these authorities and the federal one (Miletić 2005: 19). The new 1979 republican law on citizenship regulated the matter differently:

- the main authority for collecting and processing applications and for decision-making on the territory except in the SAPs was the Republican Secretariat;<sup>22</sup>
- the main authority for collecting and processing applications, and for decision-making on the territory of SAPs were provincial secretariats for interior, although they (at least formally) required the endorsement of the Republican Secretariat before making the final decision<sup>23</sup>.

The overall citizenship policy in SFR Yugoslavia was incoherent, and these peculiar aspects in Serbia made the process of administering citizenship unmanageable (Miletić 2005: 20). In order to resolve this problematic situation, a law amending the citizenship law of Serbia was enacted in 1983 and it established that the decision-making competence for the whole territory of Serbia (including the SAPs) was to be allocated to the Republican Secretariat of the Interior. The amendment of the law seems to have been related both to the need to ensure more efficient and effective citizenship policy but also to increasing centralisation that emerged in Serbia in early 1980s. This law remained in force until 2004.

We should also mention the problem of registries. Specifically, the republican registries are considered to have been one of the most problematic aspects of citizenship throughout the whole period of the second Yugoslavia (Pejić 2005; Štiks 2010; Knezević 1998). First, there was a failure in all republics to update their registers regularly and to make regular use of them, leading to discrepancy between formally regulated procedures and actual practice. Second, procedures for keeping the registers often changed and there were conflicts between procedures in different republics. However, the main problem was that data on citizenships were recorded simultaneously in the registers of birth and in special registers of citizens (Miletić 2005: 22). This led to situations of duplicated records, irregularities, discrepancies, as

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<sup>22</sup> This was in accordance with the 1976 Federal Law and applied in other republics.

<sup>23</sup> This is sometimes called 'quasi-citizenship' (Krasniqi 2010) because SAPs shared the competence for citizenship with the republican level and they issued their own passports with provincial codes: V for Vojvodina and KA for Kosovo (Kosovo in Albanian).

well as to a situation in which republican citizenship of individuals was never registered.<sup>24</sup>

It is argued that republican citizenship, even though increasingly prominent institutionally, was not 'enforced' because it had no legal or practical significance (Pejić 1995: 8). Indeed, for citizens, changing their republican citizenship after moving from one republic to another was not considered important (Štikš 2010: 9). This was so even though access to another republican citizenship was relatively easy (Medvedev 2007: 308). The practical disregard for republican citizenship led to a situation in which a substantial segment of population 'had no *prima facie* proof of having the citizenship of a particular republic' where they lived (Pejić 1995: 8). If we add also the issue of children of parents with different republican citizenships, it becomes obvious why a large number of former Yugoslav citizens were transformed into aliens or stateless persons the moment the federal state was dissolved.

### 2.3 Serbia after SFRY: 1992-2003

The concepts of nation, state and citizenship in SFRY were based on the claim that 'Yugoslav nations, whose territorial sovereignty was recognised, had been established as historical-political nations' (Djindjic 2003: 165). It derived from the assumption that those nations had emerged over a long period and created internally homogenised 'national individualities' with ethnic minorities politically integrated. Thus, the constitutions in Second Yugoslavia followed a formula that a republic equals a nation together with territory and sovereignty and that set the foundation for the tacit establishment of nation-states within the (con)federation (the eternal exception being Bosnia-Herzegovina as a historic multi-ethnic republic). However, those nations were actually 'natural-ethnical collectivities that produced internal homogeneity, primarily, by physical removal of minority ethnic groups' (Djindjic 2003: 165). In these constitutional circumstances, and bearing in mind the fact that the republics remained deeply ethnic, the consequence of the collapse of SFRY involved a trend of establishing unitary states based on predominantly ethnic concepts of nation and citizenship. Indeed, 'new legislation in almost all Yugoslavia's successor states offered privileged status to members of the majority ethnic group' (Štikš 2010: 11). This was 'an important part of the general strategy of ethnic engineering and redesigning populations of the successor states to solidify their ethnonational core groups' (Štikš 2006: 484). Nevertheless, the situation in Serbia after the dissolution of the second Yugoslavia was slightly more elusive and the actual purpose of the citizenship policy was hard to interpret properly. The challenge relates to the fact that Serbia was constitutionally defined in civic notions according to its 1990 Constitution and that the new law on citizenship of the Federal Republic of Yugoslavia was adopted only in 1996. However, political analysis indicates that

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<sup>24</sup> For detailed explanation on how the registries operated, see Miletić (2005: 23-26)

Serbia, while it might not have been deeply engaged in ethnic engineering by means of its citizenship laws, has made (somewhat ineffective) attempts in that direction since mid-1990s.

The Socialist Republic of Serbia changed its constitution in 1990 just before the Yugoslav wars. The new constitution substantially reduced the autonomy of the SAPs in order to increase the control of the central government. Inter alia, this affected the issue of the autonomy of Kosovo, the province predominantly populated by ethnic Albanians (see Krasniqi 2010: 7-9), and contributed to a spiral of conflicts which remain unresolved today. A new, third Yugoslavia - the Federal Republic of Yugoslavia (FRY), comprised of the Republic of Serbia and the Republic of Montenegro, was established in 1992. This third Yugoslavia was considerably more federal in the institutional sense, but given the constellation of political forces, almost completely controlled by the Serbian government in actual practice – and the party that ruled until 2001 (the Socialist Party of Serbia, SPS). The leader of that party, Slobodan Milosevic, has been seen as one of the main factors in dissolution of the SFRY, and, certainly, the main political figure in the FRY. His bureaucratic communist background, combined with the populist use of nationalistic rhetoric also influenced the elusive and ambiguous concept of citizenship in the FR Yugoslavia.

According to the 1990 Constitution of Serbia, 'The Republic of Serbia is a democratic State of all citizens living within it, founded upon the freedoms and rights of man and citizen, the rule of law, and social justice' (art. 1). Other aspects of this constitution – as well as the one of the FRY, did not contain any trace of 'ethnification'. This contrasts with most other states that emerged after the collapse of the SFRY, but it is not sufficient evidence in and of itself for refuting the assumption of 'ethnification' of citizenship. The practice of Serbian and Yugoslav politics in 1990s indicates that not only did Serb ethnicity gain primacy<sup>25</sup> but also that the rights of minorities – formally protected by the constitution – were often not secured. The law on Serbian citizenship of 1979, as amended in 1983, remained in force, but a new Law on Yugoslav Citizenship was approved on 16 July 1996, and it came into force on 1 January 1997.<sup>26</sup> As citizenship again became 'Yugoslav' (and not 'of Yugoslavia'), the old concept of the primacy of federal over republican citizenship was re-established.<sup>27</sup> The federal law apparently established the Federal Ministry of the Interior as the central authority for citizenship. However, the reality was that the federal ministry was in charge only in respect of federal citizenship, while republican ministries of the interior remained in charge of republican citizenship (Miletić 2005: 21). This 'double track' [*dvostruki kolosek*] meant that the federal level was competent only for the change of federal citizenship status (i.e. both republican citizenships at

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<sup>25</sup> It should be noted that many Serbian leaders were either Montenegrins (including Slobodan Milosević) or originated from Serb communities in Croatia or Bosnia-Herzegovina (including the longest-serving prime minister Mirko Marjanović). This is relevant in the context of elusiveness of the concept of Serb/ian nation.

<sup>26</sup> Official Gazette of Federal Republic of Yugoslavia, 33/1996.

<sup>27</sup> See also the FRY Constitution, art. 17.

the same time). However, this was precisely the most problematic aspect of the citizenship policy in the 1990s.

The 1996 federal law proclaimed the continuity of the FR Yugoslav citizenship with the citizenship of the SFRY, which was in line with government's claim that the FRY was the sole successor state of the SFRY (Linta 2006: 270). However, legal analysis of the citizenship law refutes that continuity, particularly concerning conditions for obtaining the new citizenship (Linta 2006: 270; Rakić 1998: 64). According to the transitional section of the 1996 law<sup>28</sup> only those in possession of citizenship of the Republic of Serbia or of the Republic of Montenegro on 27 April 1992 (the day of establishment of the state) became citizens of FR Yugoslavia *ex lege* (including their children born after that date) (art. 46). Those with permanent residence on the territory of the Republic of Serbia or the Republic of Montenegro on 27 April 1992 and who had citizenship of another republic of the former SFR Yugoslavia could register as citizens<sup>29</sup> provided they did not have another citizenship (art. 47). However, this second category<sup>30</sup> was required to make an application at the Federal Ministry of the Interior for an 'entry' into the register of citizens.<sup>31</sup> The application should have been made within one year of the date when the law came into force (i.e. by 1 January 1998) or within a period of three years, providing this delay was justified.<sup>32</sup> The major problem with the second group of potential citizens was the fact that a substantial percentage of the population<sup>33</sup> did not have permanent residence on the required date for at least two reasons. Some of them were refugees fleeing from Croatia or Bosnia and Herzegovina who came to Serbia or Montenegro after that date. For others who moved to Serbia before the war, but did not change their residence, it was very difficult to obtain permanent residence in accordance with the laws at that time.<sup>34</sup>

The law also envisaged a third category of potential citizens, namely those who could acquire citizenship through 'acceptance' (art. 48). This applied in the case of persons who had been citizens of a republic of the former SFR Yugoslavia, but, due to their national, religious or political affiliation and their actions regarding promotion of human rights and freedoms had to take refuge on the territory of the FR Yugoslavia, and did not possess another citizenship. Two particular remarks

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<sup>28</sup> For detailed analysis of other sections of the law, see Knežević (1998: 234-239).

<sup>29</sup> They would obtain Yugoslav citizenship, and the citizenship of the republic where they resided.

<sup>30</sup> This includes also: a) the children of the abovementioned individuals born after that date, and b) citizens of another republic of SFRY who were professional (non)commissioned officer and member of his or her immediate family, if they did not have another citizenship.

<sup>31</sup> The situation with registries was not improved by the 1996 Law: data on citizenship continued to be recorded both in registers of birth and in a special register of citizens [*Matična knjiga jugoslovenskih državljana*] for those accepted or newly registered. The republican ministries of interior were in charge of the former and the federal one for the latter until its closure in 2003 (Miletić 2005: 26).

<sup>32</sup> No criteria for this justification has even been regulated but the application was accepted by early 2000 (Linta 2006: 275).

<sup>33</sup> Rakić (1998) assumes that some 8-9 per cent were foreigners or stateless persons at that moment.

<sup>34</sup> There is a difference between *boravište* (residence) and *prebivalište* (permanent residence).

should be made upfront. First, the law did not actually use the term 'refugee' because, at the time of the establishment of the first registers of refugees, the government insisted on a distinction between 'refugees' [*izbeglice*] and the 'expelled' [*prognanici*].<sup>35</sup> The major difference was the expectation that the 'expelled' would return to the states from which they were expelled and that they would not permanently settle in the FRY. This was also supported by the policy of the Yugoslav government according to which the responsibility for those people should not belong to the FRY but to those states from which they had fled. The second remark refers to the legal requirement that they should justify the reasons for taking refugee. It was not merely that this group of persons had to justify their case and that the government would decide on those applications in discretionary manner (with no rules governing how the justification should be evaluated), but that it was correct to take the decision bearing in mind the 'interests of security, defence and the international position of Yugoslavia'. Clearly, this legal notion increased the already considerable discretionary power of the government and used it for manipulative and instrumental purposes.

Although 'acceptance' provided an opportunity for refugees to obtain Yugoslav citizenship, the way it was regulated, as well as the retroactive application, created a situation of 'utter legal uncertainty' (Linta 2006: 280). The data on the number of persons who were 'accepted' into the citizenship differ (see the last section of this paper), but most probably only 25,500 (covering around 42,000 persons) out of 83,000 applications (covering around 100,000 persons) were approved. While this may seem to be a considerable number of persons, we need to take into consideration that there were more than a half of million of refugees in the FRY at that time mainly from Croatia and Bosnia-Herzegovina. One of the reasons for this small number is certainly the short duration of the period for applications (Linta 2006: 277), as well as the inefficiency of the administration. Nevertheless, much more important was the political reason that may have taken the form of a more or less comprehensive policy of the Yugoslav government.

As argued by Štiks (2010: 14), it was the 'deliberate political manipulation of the refugee problem' that made Serb refugees 'the true hostages' of the incumbent regime. One of the reasons why the law was enacted several years after the establishment of the FR Yugoslavia was related to the government's policy of waiting for the final resolution of the Yugoslav wars to inform their own citizenship policy. There is solid anecdotal evidence<sup>36</sup> that the government wanted to achieve two goals: a) to put more pressure on refugees (as well as on the government of Croatia and Bosnia and Herzegovina after the war) to return to their homes, and b) to resettle the remaining refugees into two Serbian provinces so as to change demographic balance between the Serb and non-Serb populations. The second goal was pursued through a particular type of 'blackmail': if a refugee registered his or her residence in the

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<sup>35</sup> Interview with a former government official on 31 March 2010.

<sup>36</sup> Interviews with two former government officials on 31 March 2010 and 23 April 2010.

province of Kosovo and Metohija (in particular where Serbs were in the minority),<sup>37</sup> or in municipalities in the province of Vojvodina with an ethnic Hungarian majority,<sup>38</sup> he or she would gain access to citizenship. From this vantage point, it seems that this policy was highly ineffective. The first goal was not achieved due to the very small number of returnees. Even today, the refugee problem remains highly prominent (see the last section). The second goal was not achieved for different reasons in each province. In Kosovo, it failed because refugees did not consider the province to offer sufficient opportunities for economic prosperity. In some cases, it was poorer than the places they came from. Moreover, most of those who registered their residence in Kosovo only fictionally lived there and de facto settled in more developed regions of Serbia. In Vojvodina, it failed because of the fierce opposition of Hungarians who opposed established of UNHCR-financed refugee collection centres.<sup>39</sup> The irony is that a substantial majority of refugees actually settled in Vojvodina (though not so much in the Hungarian municipalities) because it was the most developed region in Serbia and it offered economic opportunities.

There are two other remarks that should be made regarding this period. First, the 1996 law entered into force in the period after international isolation, extreme hyperinflation and a period of systemic disrespect for the rule of law. This implied that most government services included bribery, and the case of registering citizenships was not an exception. Based on current research, there is no evidence that citizenships were sold<sup>40</sup> – most of the cases referred to ‘oiling’ civil servants to provide citizenship certificates more quickly.<sup>41</sup> Anecdotal evidence seems to suggest that what might have been sold were new Yugoslav passports – but only abroad and in certain consulates, because EU passports were considered more valuable on the black market in Serbia. Secondly, due to the increasing spiral of violence in Kosovo, a large portion of Serbian population was (self-)excluded – namely, Kosovo Albanians (Štiks 2006: 17-18). This kind of exclusion took a ‘political not legal shape’ because they formally had citizenship, but their rights were not secured. In addition, they also self-excluded themselves and established a parallel system considering the rule of Serbian/Yugoslav authorities illegitimate on the territory of Kosovo after 1990 (Krasniqi 2010).

The 1996 federal law was slightly amended after the change of the regime in Serbia in 2000. In order to facilitate the return of the diaspora, who were expected to provide expert support for political reforms, dual citizenship was tolerated for the

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<sup>37</sup> In addition, this was almost everywhere because the Serb population had already decreased to some 10-20 per cent and was concentrated mostly in northern Kosovo and Priština.

<sup>38</sup> In Vojvodina Hungarians comprise only 10-15 per cent and are concentrated in places bordering with Hungary.

<sup>39</sup> Certain actions of UNHCR at that point indicate, at least according to a former government official, that it implicitly supported the government’s policy on resettling refugees.

<sup>40</sup> There is a reference (Svilanović 1998) that citizenships were sold, but this report could confirm that claim.

<sup>41</sup> Interviews with two former government officials on 31 March 2010 and 23 April 2010.



first time. According to the amendments of the 1996 Law,<sup>42</sup> arts. 47 and 48 were reformulated so that Yugoslav citizenship could be acquired without release from another citizenship or simply on basis of being married to a Yugoslav citizen.

## **2.4 New Serbian Citizenship 2003-2010**

On 4 February 2003, the FRY was transformed into the (confederal) State Union of Serbia and Montenegro. According to the Constitutional Charter, the portfolio of interior affairs was divided between the State Union and republics (member-states).<sup>43</sup> However, the competence for citizenship issues was fully devolved to the republican ministries of interior. Another constitutional and legal transformation (this time in the confederal direction) is obvious not only regarding devolution of citizenship policy, but also with the change of the name and definition of common citizenship. The Constitutional Charter established the citizenship of the State Union' and defined that it derived from republican citizenship. Such explicit supremacy of republican citizenship was in sharp contrast with the 1996 law and it was for the first time in the history of Serbia and Yugoslavia that the formally dominant citizenship was the republican one. A rather confusing aspect of new citizenship related to the issue of continuity with the FRY citizenship. Art. 25 of the Law on Implementation of the Constitutional Charter confirmed the continuity. However, it was also established that, due to exclusive republican competence for citizenship, new laws would be passed in each republic. This not only indicated a considerable discontinuity with the former citizenship regime, but also the consequent lack of an umbrella law created opportunities for discrepancies between individual republican laws.

With the complete devolution of the authority for citizenship to the republican level, Serbia assumed full responsibility for regulating its citizenship for the first time. Even though the State Union continued to exist for several more years, the Serbian government used its new competence to regulate citizenship as if the Republic of Serbia was a sovereign and independent state. This was logical to some extent since the citizenship of the State Union carried no practical relevance and there was no formal requirement for harmonisation with citizenship regulation of Montenegro. Nevertheless, the new law was created during a turbulent period with an outdated Serbian constitution in place and without a clear idea of the future status of the State Union. The common state dissolved in 2006 when Montenegro declared its independence and when Serbia (as a consequence rather than by its own will) became independent after 92 years.

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<sup>42</sup> Official Gazette of FR Yugoslavia, 9/2001.

<sup>43</sup> Although it may appear that the whole portfolio was removed from the State Union level, this explanation is more factual (see Linta 2006: 269).

The Law on Citizenship of the Republic of Serbia<sup>44</sup> was enacted on 20 December 2004 and came into force on 29 December 2004, with an application date of 28 February 2005. On that day, the validity of the Law on Citizenship of the Socialist Republic of Serbia of 1979, as well as the Law on Yugoslav Citizenship of 1996 ceased. The 2004 law<sup>45</sup> was amended in 2007 in order to harmonise it with the new Constitution of Serbia. Those amendments related mostly to minor text revision regarding the fact that the State Union dissolved: removing 'Serbia and Montenegro' from all articles, and excluding articles that regulated the change of member-state citizenship within the State Union. However, there was also relevant change to art. 23 regarding special conditions for acquiring citizenship, as well as of art. 52 regarding Montenegrin citizens with residence in Serbia (see below).

The main purpose of the law was to become very liberal, i.e. 'to allow everyone who wished to obtain the Republic of Serbia's citizenship, to do so more easily than before' (Linta 2006: 279). Moreover, it tried to incorporate the principles and norms of the European Convention on Nationality, even though Serbia had not ratified it (Miletić 2005: 41-44). Inter alia, the law removed the previous condition regarding the need for the applicant to be employed or to have another source of income, as well as conditions relating to criminal prosecutions. The criterion of residence is no longer the main criterion, which means that certain special categories of persons can acquire citizenship even if they are not residents on the territory of Serbia. Even those foreigners who do not belong to any of the special categories of applicants now require only three years of residence. Most importantly, the law avoids reference to certain strictly ethnic conditions for citizenship, such as knowledge of the Serbian language, the acceptance of Serbian culture, etc – even though it provides preferential conditions for admission into citizenship for persons belonging to Serb or other nation/ethnicity (Miletić 2005: 41-44). Finally, the law allows (or at least tolerates) dual and multiple citizenships. This is a legal rule that, while *per se* very liberal and progressive, has produced problematic implications for some other states in the region. Last, but not least, the law makes an attempt to resolve the problem of registries by unifying them within the Ministry of the Interior. It should also be mentioned that the law insisted on preventing any situations arising in which a person might become stateless.

Art. 1 of the current law<sup>46</sup> states that its object is citizenship 'of the Republic of Serbia'.<sup>47</sup> The 2004 version of the law stated (art. 51) that citizens of Serbia will be those Yugoslav citizens who had citizenship of Serbia on the day of enactment of the Constitutional Charter of the State Union (4 February 2003). In the new version that

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<sup>44</sup> Official Gazette of the Republic of Serbia, 135/2004.

<sup>45</sup> Official Gazette of the Republic of Serbia, 90/2007.

<sup>46</sup> There is no consolidated text of the two laws – so, when an article is mentioned it refers to the 2004 law as amended in 2007.

<sup>47</sup> In 2004 the citizenship was still 'complex', i.e. comprising of citizenship of Serbia and citizenship of the State Union of Serbia and Montenegro (arts. 3-5) - the citizenship of Serbia had supremacy, while the State Union citizenship had relevance only in the international arena.

date is 27 February 2005 – the date of enactment of the revised law. The 2007 version of the article states that citizens of Serbia are also persons who acquired citizenship in between these two dates (4 February 2003 and 27 February 2005). These transitional provisions established continuity with the citizenship of the Republic of Serbia (when part of the FR Yugoslavia and subsequently the State Union). It is highly relevant to underline that the law defined another large group as citizens of Serbia, namely those persons who, on the date of enforcement of the law, had citizenship of another former SFR Yugoslav state (or the state created on the territory of the former SFRY) and who had permanent residence in Serbia for at least nine years.<sup>48</sup> They could become citizens under the condition of submitting a written statement that they accept Serbia as their state and without release from another citizenship (art. 52). Those persons could become citizens of Serbia without an administrative decision if they made the application within three years (extended in the 2007 version five years; i.e. by 27 February 2010 or six years after the first law was enacted). This is one of crucial transitional articles because it collectively (and almost automatically) incorporated the whole group of refugees<sup>49</sup> into the citizenship of Serbia, providing they so wished. The 2007 amendment of the transitional art. 52 provided a similar opportunity for Serbian residents who had citizenship of Montenegro on the day of dissolution of the State Union (3 June 2006). They were also required to submit a written statement and did not need to renounce their Montenegrin citizenship. This was meant to facilitate one of the goals of the 2007 version of the law. This was to protect Serbian residents with Montenegrin citizenship, due to the concern that the Republic of Montenegro (after its independence) would unilaterally terminate their Montenegrin citizenship and leave them stateless.<sup>50</sup> Nevertheless, this has created a number of problems between the two, newly independent states of Serbia and of Montenegro, as the next section will show.

The specificity of the law is that, in addition to the typical standard procedure for admission into citizenship, it provides for preferential treatment of several special categories of applicants. First, there is a possibility for those belonging to Serb or another nation or ethnicity from the territory of Serbia to acquire citizenship by a mere written statement, and without release from another citizenship (art. 23) – the same applies for emigrants and their descendents (art. 18). This was contained in both versions of the law, although, formally speaking, only the second version separates Serb and other ethnicities in two paragraphs, so as to align it with the new, 2006 constitutional definition of Serbia ‘as the state of Serbs and other citizens’. Secondly, for those who had citizenship of Serbia but then lost it, the conditions are also minimal (art. 34). Thirdly, those who had citizenship of another former SFRY Republic do not need to meet the standard requirements (art. 52). Finally, citizenship

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<sup>48</sup> The nine years refers to the period until 2005, i.e. it includes those who registered residence after the end of the Yugoslav wars.

<sup>49</sup> The law does not explicitly refer to refugees, so any person from former SFRY who started to reside in Serbia from, at least, mid-1990s is eligible.

<sup>50</sup> Interview with a former government official in charge of interior affairs on 23 April 2010.

can be granted to a foreigner (and his or her husband or wife) without meeting any conditions, if that is considered to be in the interests of the state (art. 19).

### 3 Current regime

#### 3.1 Acquisition and loss of citizenship of the Republic of Serbia

##### 3.1.1 Acquisition of citizenship

Art. 8 lists four ways to acquire the citizenship of Serbia and organises them into two groups based on the required procedure:

- Ex lege: by descent and by birth on the territory, and
- Admission (naturalisation): by application that results in an administrative decision of the Ministry of the Interior [*pravosnažno rešenje*].

There is also an option for acquiring citizenship by international agreements, under the condition of reciprocity (art. 26). In this case, citizenship is acquired or lost on the day of ratification of the agreement, provided the reciprocity is secured.

Citizenship of the Republic of Serbia is automatically acquired by a child whose both parents, at his or her birth, are citizens (pure *ius sanguinis*), or one of whose parent, at the date of his or her birth, is a citizen and the child is born on the territory of Serbia (combination of *ius sanguinis* and *ius soli*) (art. 7).<sup>51</sup> In addition, a child becomes a citizen of Serbia when she or he is born abroad and one of his or her parents, at his or her birth, is a citizen of Serbia and the other one is either unknown, of unknown citizenship, or stateless. This implies that a child born of one citizen of Serbia whose other parent has citizenship of another state does not automatically become a citizen of Serbia. However, that child can become a citizen if the parent of that child who has citizenship of Serbia registers the child in a diplomatic or consular office of Serbia by the age of eighteen and applies at the Ministry of Interior for the child's registration in the register of citizens (art. 9). Finally, a child born abroad, one of whose parents is the citizen of the Republic of Serbia at the moment of child's birth, acquires by descent the citizenship of Serbia if she or he would otherwise become stateless, even if the previous conditions not met. If a child is over fourteen years old, she or he needs to give consent. Finally, there is also an opportunity for acquiring citizenship for a person over eighteen who was born abroad and one of whose parents, at the time of his or her birth, was a citizen of Serbia (and the other was a foreign citizen) if she or he merely applies for registration as a citizen by the age of 23 (art. 9). All the above-mentioned rules apply identically for an adopted child-foreigner or adopted stateless child in case of complete adoption, but in this case, the application for registering is made by the parent who adopted the child and

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<sup>51</sup> Lines 3-5 of this article in the 2004 version referred to situations that included a parent from, or birth in, Montenegro, but this was excluded in the 2007 version.

who is a citizen of Serbia, or by the adopted person herself or himself if she or he is between the ages of eighteen to 23 (art. 11).

Children born (or found) on the territory of the Republic of Serbia acquire citizenship by birth if both of his or her parents are unknown, of unknown citizenship, or stateless, or if the child is stateless (art. 13). These children can cease to be citizens if by the age of eighteen if it is found that both of his or her parents have foreign citizenship, and if requested by the parents (with the consent of the child required after the age of fourteen). As can be seen, the law offers several different opportunities for avoiding statelessness of children. Moreover, the law allows dual and multiple citizenships when the citizenship of Serbia is acquired by descent, or by a combination of descent and birth on the territory.

Citizenship of the Republic of Serbia can also be acquired by admission [*prijem*]. The amended 2004 law is rather liberal in this regard and it tolerates dual and multiple citizenships. Although the renunciation or loss of another citizenship is required, it 'shall not be requested if that is not possible or cannot be reasonably expected' (art. 15). This implies that the requirement is rather flexible and that its fulfilment will not be considered *conditio sine qua non* (Miletić 2005: 61). Hence, sufficient typical conditions for acquisition of citizenship of Serbia by admission include: being older than eighteen, residing in Serbia for at least three years (continuously), and providing a written statement that the applicant accepts the Republic of Serbia as his or her state (art. 14). This statement, along with an application form must be submitted to the Ministry of the Interior using standard forms. The date of acquisition of citizenship by admission is the day of delivery of the administrative decision on admission by the Ministry of the Interior (art. 25).

Two special procedures provide more convenient (but still typical) modes for the acquisition of citizenship. First, if the applicant was born on the territory of Serbia, the required number of years of residence is only two (art. 16). Therefore, a child born on the territory of Serbia with foreign citizenship and whose parents are both foreigners can be admitted into the citizenship of Serbia after the age of two or at any point in his or her life after two years of continuous residence. Second, a foreigner who is married to a person with the citizenship of Serbia for at least two years needs only to register his or her residence – without meeting the condition of three years of continual residence – in order to acquire citizenship (art. 17). In other words, a spouse of a person with Serbian citizenship requires only the written statement, provided she or he registered the residence in Serbia. It should also be mentioned that a child of parents who (both) became citizens of Serbia by admission can also acquire citizenship, if younger than eighteen (art. 20). If only one parent became a citizen of Serbia by admission, the child (younger than eighteen) can

become a citizen of Serbia if that parent submits a request and if the other parent consents (and the child consents if older than fourteen).<sup>52</sup>

### 3.1.2 Loss of citizenship

Loss or termination (*prestanak*) of citizenship occurs by release [*otpušt*], by renunciation [*odricanje*] or by operation of international agreements (art. 27).<sup>53</sup> Citizenship of the Republic of Serbia is terminated on the date of delivery of the decision on release from citizenship, on the date of making a statement on renunciation in case of termination of citizenship by renunciation, or on the date of ratification of international agreement if reciprocity is provided (art. 37).

A citizen of Serbia can be deprived of citizenship by release (art. 28) if she or he applies for release and if she or he fulfils the following conditions: she or he must be over eighteen years old, have no obstacles regarding military service, have settled all taxes and other legal liabilities in Serbia, have regulated property and legal obligations arising from matrimonial relations and relations between parents and children related to persons living in Serbia, and be subject to no criminal proceedings instituted for criminal offences prosecuted ex officio in Serbia (or the prison sentence has been served), and she or he has foreign citizenship (or possesses evidence that it will be acquired after release of the citizenship of Serbia). If a person who received release from citizenship does not acquire foreign citizenship within one year, the termination of his or her citizenship of Serbia will be annulled (art. 32) in order to prevent statelessness (Miletić 2005: 72). Overall, the loss of citizenship by application is considered to be a free expression of a citizen's own will and it will be approved if all conditions are met simultaneously (Miletić 2005: 71).

Military service is a problematic condition for citizenship. However, Serbia plans to professionalise its military shortly, so this may soon cease to be relevant. Another possibly problematic condition concerns the additional conditions in art. 29: 'the release shall not be granted if that is necessary for the reasons of security or defence of the country, for a reason of reciprocity or due to the economic interests of Serbia'.<sup>54</sup> These conditions are 'alternatively determined', meaning that if any of those conditions are not met termination may be refused (Miletić 2005: 73).

A citizen of the Republic of Serbia who applies for release from citizenship can, with the same application, request release from citizenship for his children until

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<sup>52</sup> Line 2 requires the child to live in Serbia, but line 3 states that, even if the child does not live in Serbia, she or he can be admitted into citizenship – so it is not a real condition for admission of such a child.

<sup>53</sup> The 2004 version included 'acquisition of citizenship of another member-state' of the State Union Serbia and Montenegro – but this was excluded when the State Union ceased to exist.

<sup>54</sup> Apparently, this is an improvement in comparison with the previous law because the conditions are now listed explicitly (i.e. no more 'other conditions') (Miletić 2005: 73).

they are eighteen years old (provided the consent of the other parent<sup>55</sup> and of child if she or he is over fourteen is given) (art. 30). If the other parent refuses to give his or her consent, is of unknown residence, or is deprived of working capacity<sup>56</sup> or parental rights, the application for release of the child from citizenship shall be accepted if, in the opinion of the competent guardian authority, it is in the best interests of the child. In the case of full adoption, the adoptee can be released from citizenship up to age of eighteen if the application for release of citizenship is submitted by an adoptive parent who is either a foreigner or an adoptive parent who applied for release from citizenship, and if the above-mentioned requirements are met. However, such a child will not lose his or her citizenship if that would lead to statelessness.

Citizenship can also be lost (terminated) by renunciation. A citizen of age who is born and lives abroad (and has another citizenship) can renounce citizenship of Serbia up to the age of 25 (art. 33). If a person is younger than eighteen, the citizenship can be lost only after a request by a parent. Finally, citizenship can be lost in case if the documents or information included in the application for admission were false or forged. However, such persons do not lose their citizenship if they would become stateless as a consequence. The Ministry of the Interior makes the decision on this matter according to art. 45.

Citizenship of Serbia can be reacquired. A person released from citizenship who acquired foreign citizenship and a person whose citizenship of Serbia was terminated at the request of his or her parents is eligible for readmission. This person can apply for citizenship merely by submitting a written statement, provided she or he is of age and is able to work (art. 34).

### 3.2 Specific rules for admission of selected categories

Beside the typical procedure for admission into citizenship, there are special, more convenient opportunities for four categories:

- 1) Emigrants and their spouses and descendants (art. 18).
- 2) Foreigners and their spouses if their admission to citizenship is in the interests of Serbia (art. 19).
- 3) Persons of Serb nationality and ethnicity [*pripadnik srpskog naroda*] without residence in Serbia (art. 23(1)) and persons of other nation/ethnicity or ethnic community [*pripadnik drugog naroda ili etničke zajednice*] from the territory of the Republic of Serbia without residence (art. 23(3));

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<sup>55</sup> If the parents are divorced, the application for release from citizenship of the Republic of the child can only be submitted by a parent who was entrusted with the custody and education of the child.

<sup>56</sup> Working capacity refers to the ability to work.

- 4) Persons with residence in Serbia born in the former Yugoslavia (SRFY) who fled, were expelled or forcefully migrated [*izbegli, prognani ili raseljeni*] from another former Yugoslav republic (art. 23(2)).

There is no reference to loss of another citizenship for those categories – i.e. all those categories are clearly allowed to have dual or multiple citizenship.

The first category applies in respect of anyone who has migrated from Serbia at any time ‘with the intention to reside permanently abroad’. In order to be admitted they must be older than eighteen and cannot have been deprived of working capacity. The procedure consists of submitting a written statement. No residence criterion is applied. The most convenient aspect of this form of citizenship acquisition is that even the spouses and descendants of this group of persons can be admitted into citizenship of Serbia through this procedure. Information obtained in an interview in the Ministry of the Interior indicated that this opportunity is used predominantly by Jewish people who immigrated to Israel in 1960s or by Bosniaks who lost their citizenship pursuant to international agreement between the SFRY and Turkey.<sup>57</sup> Regarding the second group of applicants there is anecdotal evidence<sup>58</sup> that a large number of Turkish citizens (former citizens of Serbia from Raška) requested to become citizens of Serbia, particularly after the liberalisation of the EU visa regime for Serbia. The second category applies to those persons (and their spouses) who are identified as particularly relevant for the ‘interests of the Republic of Serbia’. The government of Serbia makes the decision on the request of the Ministry of the Interior and no conditions for admission apply.

The third category includes persons considering themselves of either Serb or of any other nationality or ethnicity from the territory of Serbia. They can be admitted if they are older than eighteen and are able to work. While there was no difference between those of Serb and those of other ethnicity in the 2004 version of the law, the 2007 law amended the relevant art. 23. The current article separates these groups and, although the same conditions for admission are applied, persons of Serb ethnicity ‘have right to be admitted into citizenship’ [*imaju pravo*], while persons of other ethnicities ‘may be admitted into citizenship’ [*mogu*]. In the 2004 version, the same language was used for both groups: ‘may be admitted into citizenship’. The amendment of this article in 2007 may have been required in order to harmonise the law with the definition of citizenship in the new Serbian constitution of 2006 that described Serbia ‘as a state of Serb people and all citizens who live in it’.

The fourth category refers to refugees who were born on the territory of one of the former SFR Yugoslav republics (other than Serbia) who had citizenship of that republic or has become a citizen of a state that was created on the territory of the former SRF Yugoslavia. This is relevant for all those former Yugoslav citizens who do not meet the residence requirement of nine years referred to in the transitional art.

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<sup>57</sup> This agreement implied that those Bosniaks from Rashka (south-west Serbia) who moved to Turkey lost their SRFY and Serbian citizenship.

<sup>58</sup> This was indicated in an interview at the Ministry of the Interior on 16 April 2010 and in the interview with the political representative of the Bosniaks from Raška on 21 April 2010.



52 that defines the new pool of citizenship. The condition for admission (beside being of age and being able to work) is that this person resides in Serbia and submits the written statement. The word used for 'resides' (*boravi* from *boravište*) does not imply permanent (*prebiva* from *prebivalište*), but only temporal residence. In other words any refugee from Croatia or Bosnia and Herzegovina, even if he or she has citizenship of one of those two states, can be admitted into citizenship of Serbia by a mere written statement. This article was meant to resolve the still prominent issue of refugees in Serbia.

### 3.3 Institutional arrangements and practice

Some of most important practical aspects of the law are contained in the transitional and final section. Besides defining the new pool of citizens, annulling previous laws, and confirming the continuity with previous citizenship, this section also states that additional legislation shall be adopted within 60 days of the enactment of the law by the competent ministry (art. 64). Arts. 15 and 48 provide full competence for citizenship (including secondary, executive legislation) to the Ministry of the Interior of the Republic of Serbia. Although the Ministry of the Interior did not adopt any particular set of instructions on application of specific norms (such as those relating to special categories of admission),<sup>59</sup> it adopted twelve standard forms. These include:

- Written statement of accepting Serbia as own state
- Registering birth abroad regarding citizenship status
- Application form for admission
- Request by an emigrant to be admitted
- Request for admission in accordance with art. 23
- Request for admission of a refugee
- Request for release from citizenship
- Request for readmission into citizenship

The forms also include the request for determining citizenship – the citizenship certificate – required inter alia for applications for issuing personal IDs and passports. Moreover, registers - the register of birth and the register of citizens not born in Serbia - are centralised, i.e. the Ministry of the Interior manages and supervises both of them.<sup>60</sup> It is in accordance with the intention of the law to try to prevent past, chronic problems with citizenship records. Moreover, only one authority can issue passports – the Ministry of the Interior – this means that passports can no longer be issued in the diplomatic and consular offices of Serbia.

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<sup>59</sup> This was confirmed by the representative of the Ministry of the Interior on 16 April 2010.

<sup>60</sup> Regulated in detail by arts. 46 - 50.

This centralisation of document management is meant to improve efficiency and prevent malpractice.

The Ministry of the Interior is also the sole authority in charge of making administrative decisions on admission<sup>61</sup> and loss of citizenship (art. 38). The law states that applications regarding citizenship are 'urgent' [*hitan postupak*], but there is no time limit for taking decisions specified.<sup>62</sup> Applications and requests ought to be submitted to the department of the Ministry of the Interior located in the municipality where the applicant resides, at the central office of the ministries for those without residence, or at diplomatic and consular offices of the Republic of Serbia. The applications must be submitted in person or by an authorised person, a guardian, or a parent.

A problematic aspect of the procedure concerns art. 41 which states that the Ministry of Interior can reject an application for acquisition or termination of citizenship even when it meets the conditions 'if it considers estimates that there are reasons in the interest of the Republic of Serbia, for which such an application for acquisition or termination of citizenship should be rejected'. This adds considerably to the extent of discretionary power of the ministry competent for citizenship. However, the decision on applications is an administrative decision [*upravno rešenje*] and laws on general administrative procedure apply, which offers a possibility for applicants to initiate a standard administrative appeal in the courts.

Another problematic aspect of the law relates to special categories for which the only criterion is ethnic belonging. There is no additional instruction or detailed procedure for validating the claim that a person belongs to Serb or another nationality or ethnicity from Serbian territory.<sup>63</sup> There seem to be different views on this issue. On the one hand, it is argued<sup>64</sup> that this makes the admission of those categories too flexible and provisional – basically anyone who would like to claim belonging could become a citizen of Serbia by mere written statement that he or she accepts Serbia as his or her state. On the other hand, it seems that the Ministry of Interior is too strict in applying this criterion – in an interview, it was argued that the procedure is rigid, takes too long and includes too many checks by the Ministry of the Interior.<sup>65</sup> The Ministry of the Interior<sup>66</sup> claims that it is very careful in using this criterion and that they expect the applicants to justify the belonging they claim. Moreover, they usually coordinate with two other ministries: they try to gain information from the Ministry of the Diaspora's registries of the diaspora and they try to obtain previous census information from the Ministry of State Administration

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<sup>61</sup> The exception is the case of admission of persons considered to be of special interest for Serbia, which is approved by the government.

<sup>62</sup> It seems that the procedure takes several months or more, which is not considered urgent in Serbian administrative practice.

<sup>63</sup> This was confirmed by a representative of the Ministry of the Interior on 16 April 2010.

<sup>64</sup> Argued by a former government official in charge of interior affairs on 23 April 2010.

<sup>65</sup> Argued by a representative of the Ministry of the Diaspora on 16 April 2010.

<sup>66</sup> Insight from a meeting with a representative of the Ministry of the Interior on 16 April 2010.

and Local Self-government. In general, the validation of belonging is achieved primarily by proving a family relationship with a resident of Serbia who claimed belonging in past census records or who is affiliated with certain diaspora organisation abroad.<sup>67</sup> However, if the practice validating the claim of belonging were applied by the Ministry of Interior it would contrast somewhat with art. 25(2) which states that when the only condition for citizenship is a written statement citizenship is acquired on the day that statement is submitted.

Official data on the number and the use of particular opportunities for acquisition of citizenship have not been acquired but some indication on trends has been obtained.<sup>68</sup> Most importantly, there seems to have been a considerable interest in citizenship from citizens of the Republic of Srpska (entity in Bosnia and Herzegovina) who apply on the basis of art. 23 and, to a lesser extent, from Bosniaks from Turkey and Israelis who apply on the basis of arts. 18 and 34. For all those persons (in particular Bosnian Serbs and Turkish citizens of Serbian origin) the opportunity to acquire citizenship of Serbia by mere written statement (and with the possibility to keep their other citizenship) became of particular importance after the removal of the Schengen visa requirement. At the same time, there has been an increased number of requests for termination of citizenship of Serbia by Montenegrin citizens due to the Montenegrin law forbidding dual citizenships.

#### **4 Current political debates and issues**

The 2004 Law has not produced many public debates and parliamentary discussion on the draft law did not involve the adoption of many amendments. This underlines a consensus on the main aspects of the law (Grujić 2004). There seems to be an agreement on the liberal nature of the law, the opportunity to resolve the long-standing issue of refugees, and the special treatment of Montenegrins, the former SFRY citizens from other republics and those with Serb or other ethnic origins. However, there is some controversy about the 'ethnification' of citizenship, as well as several issues that attract some public attention.

##### **4.1 'Ethnification'**

There is a legacy of ethnic aspects to citizenship in both in the Kingdom of Serbia and later Yugoslavias. The 1996 Federal law seemed to have deviated from that trend. However, as the previous analysis indicated, the practical implications of that law

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<sup>67</sup> The representative of the Ministry of the Diaspora stated that they advise diaspora of Serb ethnicity to provide a certificate of baptism [*krštenica*] in the Serbian Orthodox Church as a proof of their ethnic belonging.

<sup>68</sup> Interviews with former and current government officials. See also the statement of the Ministry of the Diaspora on the interest from diaspora for acquiring citizenships.

carried ethnic connotations. Therefore, it is not surprising that the current regime also puts an emphasis on ethnic belonging. Nevertheless, what is peculiar about the current law is that this aspect remains evasive and ambiguous. Specifically, art. 23 provides preferential conditions for all those that can prove ethnic belonging to either Serb or any other ethnic community from the territory of Serbia. On one side, it implies that Serb ethnicity is put up in front - not least because such persons have the 'right to citizenship, but on the other, the same preferential conditions apply for all other ethnicities although they do not appear to have a 'right'. To make this approach even more confusing, the citizenship itself is defined in civic notions – as 'the citizenship of Serbia'. It has been argued by several interviewees that this ethnic concept of the law does not have real legal or practical substance. The emphasis on Serbs is a reflection of the broader political orientation represented in the constitutional definition of Serbia as the state of Serbs and other citizens. This political orientation is supported by both a general political consensus<sup>69</sup> and a prevailing public conception of the nation-state. Serbs consider Serbia to be the place for all Serbs to converge – a notion related to *sabornost* [gathering]. Non-Serb ethnicities in Serbia are subject to positive discrimination in many segments of political life (e.g. reserved places in the parliament) and, hence, their representatives<sup>70</sup> tend to endorse the ethnic concept of the state. In discussions regarding the two largest minorities – Bosniaks and Hungarians – it was indicated that such 'ethnification' is not considered an issue: they consider themselves citizens of Serbia, while clearly remaining a part of their ethnic communities.

Given that the citizenship law provides the same conditions for admission into citizenship for all other ethnic groups inhabiting Serbia, the issue of discrimination of ethnic minorities within the citizenship regime has not emerged. The law itself aims to indicate that 'Serbia is everybody's country',<sup>71</sup> with the main intention to provide many different paths to admission into citizenship, as well as to ensure protection of human rights and facilitate integration of European norms regarding statelessness and multiple citizenships. In that sense, 'ethnification' was a result of compromise between a constitutional requirement for ethnic differentiation and civic substance - rather of an intention to discriminate. Indeed, although Serbs have preferential status, so do all other ethnicities from the territory of Serbia. Nevertheless, only the actual implementation of the law over a longer period would secure a more solid basis of evaluation of the ethnic aspect of the law. Several issues are already emerging.

First, it is not clear how origin or affiliation to a certain ethnicity is supposed to be proved. There is no legal requirement for a proof of ethnicity and a mere written statement that one recognizes Serbia as one's state suffices. This applies if the

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<sup>69</sup> This aspect of the Constitution was initially a result of parliamentary arithmetic – without the votes of the ultra-nationalist Radical Party it could not have been adopted. However, certain political agreement on the concept of nation-state remained, at least in daily rhetoric of most political parties. However, it has not been transformed into an extremist notion (as the Radicals might have expected).

<sup>70</sup> This whole discussion refers to Serbia without Kosovo – on the issue of Kosovo see below.

<sup>71</sup> This is an insight from an interview on 23 April 2010.

applicant for admission belongs to Serb or to any other ethnicity from Serbia. However, the Ministry of the Interior requires certain proof of ethnic belonging to be provided in the application, which may present a major challenge in the implementation of the law. It would seem that the procedure normally requires the applicant to provide proof that he or she is a descendant of a person who expressed himself or herself as Serb in previous censuses. However, many Serbs considered themselves Yugoslav in the past, and, anyway, the notion of being Serb has changed over the past decades and centuries.<sup>72</sup> Although the above seems to be a major practical problem, the fact is that a person does not need to be a Serb to have the same conditions for admission – she or he can be of any other ethnicity from the territory of Serbia. While this may remedy the problem, it actually creates several other, maybe even more problematic, situations. Serbia is a multi-ethnic country with more than twenty different ethnicities, most of which are related to neighbouring states. There are, for instance, Hungarians, Bosniaks, Albanians, Romanians, and Bulgarians.<sup>73</sup> If we take the letter of the law to an extreme, most of the population of neighbouring countries may become citizens of Serbia by mere written statement. This will obviously not happen, but the issue is how the Ministry of the Interior will evaluate applications based on ethnic affiliation. Most probably, it will approve applications only from those persons whose descendant(s) are or were citizens of Serbia, or resided on the territory of Serbia in the past. However, the law does not provide any grounds for this interpretation, and for now, there is no secondary legislation that would clarify the issue.

Finally, we should shed more light on the policy of the Serbian government towards the diaspora and the Serbs in the region. A considerable number of those may actually be citizens of Serbia and the law itself may not be relevant for them. Moreover, those without citizenship would not even need to use the ethnic condition and, instead, they could use the procedure for emigrants (which is, anyway, almost identical to the one based on ethnic affiliation). However, the concept of who the Serbian government considers to be the diaspora and how it treats Serbs from abroad and in the ‘near abroad’ should facilitate a better understanding of the broader citizenship regime. The Law on Diaspora and Serbs in the Region<sup>74</sup> was enacted on 26 October 2009 after a long period of public consultation. The initial draft prepared several years before applied a policy similar to the one of the Slovak or Hungarian governments that provides special quasi-citizenship rights to ethnic members from abroad. However, the current law changed the initial approach and produced more neutral concepts, which are also aligned with citizenship policies and the constitutional idea of the Serbian state. Most importantly, for neither of those two

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<sup>72</sup> For instance, it was long considered that if a Serb person converted to another religion (Islam or Catholicism) she or he would cease to be a Serb. Theoretically speaking, applicant’s descendant may have been a Serb before ‘becoming’ a Croat or a Bosniak – and vice versa.

<sup>73</sup> It may also be applicable to a descendant of a large German population who lived in Vojvodina before being expelled after the Second World War.

<sup>74</sup> Official Gazette of the Republic of Serbia, 88/2009.

groups does the law provide more than opportunities for economic and cultural cooperation.

The notion of diaspora is inclusive and does not relate only to Serb emigrants.<sup>75</sup> However, a large majority of non-Serb emigrants tend to affiliate with diaspora organisations of their own ethnic group or kin state,<sup>76</sup> which implies that most diaspora organisations are ethnically Serb.<sup>77</sup> Nevertheless, the Ministry for Diaspora continues to promote a more inclusive and neutral concept of diaspora and does not discriminate against other ethnicities.<sup>78</sup> The notion of 'Serbs in the Region' is new in the Serbian law and only this law refers to it. The intention to differentiate between the diaspora and Serbs in the Region is based on the concept that Serbs in neighbouring states who have not emigrated, but represent autochthonous groups (e.g. Bosnian Serbs being one of the constitutive peoples in Bosnia-Herzegovina). In terms of rights, the law does not provide additional rights, but the relationship of the Serbian government towards them is more defined. The support that Serbian government is meant to provide to the diaspora is more on an individual basis and addresses individual issues (e.g. resolving the military service obligation). The support intended for Serbs in the Region is collective and based on facilitation of economic and cultural cooperation<sup>79</sup> between them and Serbia.

The previous discussion indicates that broader citizenship regime of the Republic of Serbia remains elusive and ambiguous – it carries ethnic features, but also provides a prominent civic foundation. The definitions of citizen, nation, and state remain open for interpretation, but, hopefully, not any more for instrumental and manipulative purposes.

## 4.2 Dual citizenship

Probably the only ongoing debate regarding citizenship of Serbia relates to the issue of dual and multiple citizenship. The Serbian law is liberal in this regard and allows more than one citizenship. Thus in Serbia, this issue is considered a problem of other states and can be resolved by international agreements.<sup>80</sup> There is an agreement with Bosnia and Herzegovina, which relates to the largest number of dual citizens, namely

<sup>75</sup> See also Statement by the Minister for Dijaspóra, 'Nova politika prema dijaspori i Srbima i regionu', on 08 October 2009, at <http://www.mzd.gov.rs/cyr/News/NewsDetail.aspx?id=119&cid=981>.

<sup>76</sup> This was indicated in an interview on 18 April 2010. For example, Hungarians who emigrate from Vojvodina affiliate with Hungarian, and not Serb, organisations abroad.

<sup>77</sup> There are only few non-Serb ones, e.g. Association of Slovaks from Serbia in Bratislava or Association of Romanians from Serbian Banat.

<sup>78</sup> This was indicated in the interview on 16 April 2010.

<sup>79</sup> It should also be noted that, even before the law, there were special rights for Serbs from the Republic of Srpska (Bosnia-Herzegovina) regarding health care and education under the agreement on special relationship with the Republic of Srpska. Nevertheless, the same rights have been provided for Montenegrin citizens (regardless of their ethnicity) after the independence.

<sup>80</sup> This is insight from an interview in the Ministry of the Interior on 16 October 2010.

those from the Republic of Srpska (Marić 2010). Nevertheless, there are two issues that remain problematic: dual citizenship with Montenegro and the practical implications of the increasing number of dual and multiple citizens in the region.

After the independence of Montenegro, a large number of persons found themselves with a problematic citizenship status. This refers to Montenegrins who were citizens or residents of Serbia and Serbs who were citizens or residents of Montenegro. The Serbian law was again quite liberal and provided preferential conditions for Montenegrins and dual citizenship. However, the Montenegrin law was more conservative in terms of conditions for naturalisation (Džankić 2010), and it prohibited dual citizenship<sup>81</sup> except for those who had dual citizenship before the dissolution of the State Union<sup>82</sup> and for those who are considered by the Montenegrin government of special relevance and interest<sup>83</sup> (e.g. prominent actors, sportsmen or businessmen). Despite a long period of intensive negotiations, there has not been an agreement between the two governments on how to resolve the incompatibility between the two laws.<sup>84</sup> The Serbian government insists on the regular application of its law without exceptions,<sup>85</sup> while the Montenegrin government insists that Montenegrin citizenships will be terminated for those – except for those mentioned above – who have also the citizenship of Serbia. Moreover, the Montenegrin government insists that the Serbian government provides the list of dual citizens – which the latter refuses on the grounds of confidentiality of individual records and protection of human rights.

Another issue with dual citizenship is of a practical nature. First, the existence of a large group of dual and multiple citizens increasingly poses a serious problem for the fight against organised crime. Many criminals have more than one citizenship and tend to escape to another state to avoid prosecution.<sup>86</sup> Moreover, several other criminal groups involve individuals with multiple (Serbian, Bosnian, Croatian) citizenships who have been organising criminal operations throughout the region. Secondly, an increasing number of Serbs from outside of Serbia with dual citizenship raises the issue of political allegiances and state affiliation. The citizenship law of Serbia provides an opportunity for almost the whole population of the Republic of Srpska and more than a third of Montenegrin population to become citizens of Serbia. Political allegiances, commitment and affiliation of those people to one particular state may be problematic – are they primarily citizens of Serbia or of

<sup>81</sup> Actually, the Montenegrin law is ambiguous on dual citizenship – practice shows that it is possible for people outside of Balkans to become dual citizens (Džankić 2010: 16).

<sup>82</sup> The original date changed: initially it was by 03 June 2006 and then by 22 October 2008.

<sup>83</sup> Politika: 'Srbija ne mora da oduzme državljanstvo Mileni Dravić i Draganu Nikoliću', 28 January 2009.

<sup>84</sup> Blic: 'Nema sporazuma o dvojnomo državljanstvu Srbije i Crne Gore', 28 January 2009.

<sup>85</sup> Statement by the Minister of Interior, in 'Srbija će ponovo predložiti razgovore o dvojnomo državljanstvu', Tanjug, 25 January 2009.

<sup>86</sup> The most recent example is a drug dealer from Serbia, Darko Šarić, who has citizenship of both Serbia and Montenegro and whose whereabouts are assumed to be in Montenegro. Interview at the Ministry of the Interior on 25 January 2009.

another state? The most prominent example is that of Milorad Dodik, the Prime minister of Republic of Srpska who was admitted to the citizenship of Serbia in 2007. He has high political office within Bosnia and Herzegovina and is also a citizen of Serbia. Hence, he considers his state to be two states with his often publicly stated preference for Serbia – so the question remains what is his ‘preferred’ allegiance in the inter-state relationships and negotiations. Similarly, in Montenegro, if Montenegrin Serbs and Serbian Montenegrins also become dual citizens domestic politics will be dominated by citizens of another state or dual citizens with questionable loyalties. In Montenegro, ‘it may challenge not only the incumbent government, but also, to certain extent, the Montenegrin statehood’ (Džankić 2010: 21).

In essence, while the intention of the Serbian law to provide very liberal and inclusive treatment of dual and multiple citizenship for the first time in the history is positive it seems that practical and political implications may be very problematic. The original intention of the law was to resolve the issue of statelessness but combined with preferable conditions for ethnic communities led to an extreme situation in which almost anybody from the region can theoretically become a citizen and in which allegiance to a particular state is questionable. In the context of regional relationships in the Western Balkans, this is not merely a legal issue.

### 4.3 Refugees

During and after the wars in former Yugoslavia, major population migrations occurred which created a large pool of refugees in all of the former Yugoslav republics. Even today, Serbia has the largest number of refugees and IDPs<sup>87</sup> in Europe with some 86,000 people still in refugee registers. However, this is considerable decrease in numbers given that there used to be more than 0.5 million<sup>88</sup> refugees. Some of them returned and some emigrated, but more than 200,000 have been admitted to the citizenship of Serbia since early 1990s.<sup>89</sup> Refugees in Serbia have had several opportunities to claim citizenship. Initially it was not without problems (see the historical background), but over time they became citizens of Serbia. It has been argued that<sup>90</sup> apart from the implications of the 1996 citizenship law on ethnic reengineering aside, the Serbian government has been trying to resolve the issue of refugees and to decrease the financial burden. Moreover, it was posited that the Serbian government wanted to establish international agreements with former Yugoslav states in order to resolve the refugees issue based on shared responsibility.

<sup>87</sup> This refers to some 200,000 internally displaced persons from Kosovo.

<sup>88</sup> These numbers should be taken with some caution since they are often contested.

<sup>89</sup> Statement by the Commissioner for Refugees, in ‘Državljanstvo dobilo 200.000 prognanih’, *Glas Javnosti*, 10 April 2010.

<sup>90</sup> Interview with a former government official on 23 April 2010.



Most importantly, the 2004 Law on citizenship provided special conditions for refugees by which they could become citizens with a mere written statement, provided they had the required years of residence in Serbia. In other words, virtually almost all refugees could become citizens of Serbia if they wished. However, it seems that some of them consider that becoming citizens of Serbia would decrease their chances of return to their original residence and of regaining their property, i.e. that their own state would cease to assume any responsibility for them.<sup>91</sup> Therefore, it seems that the refugee issue in Serbia is not something that can be resolved by citizenship policy alone.

#### **4.4 Kosovo ‘citizens’**

The previous discussion related to Serbia without sufficiently taking into consideration the issues relating to Kosovo.<sup>92</sup> Specifically, Kosovo, although officially considered part of Serbia as the Autonomous Province of Kosovo and Metohija, was under UN protectorate from 1999 and declared independence in 2008. Even before 1999, Kosovo Albanians, despite being citizens of Serbia, were not provided equal political and civil rights, especially after the 1989 revocation of Kosovo substantial autonomy. There seem to have been cases where they could not even register their citizenship and/or obtain travel documents during 1990s (Štiks 2006: 489). In that sense, Kosovo is an exception to all previous arguments of this report.

Serbian authorities continued to issue passports to Kosovo Albanians even after 1999, and Kosovo Albanians used those passports for practical reasons (Krasniqi 2010: 11). At the same time, Serbs from Kosovo only considered the Serbian authorities to be legitimate and disregarded the ones of the newly independent Kosovo. Hence, the situation is quite complex with two parallel systems of citizenship operating at the same time. The Serbian Law on citizenship does not refer to the special case of Kosovo simply because the Serbian Constitution considers Kosovo as any other part of the Serbian territory. However, one recent development indicates that the Serbian government may not only be tacitly recognising a separate citizenship regime in Kosovo, but also discriminating against residents of Kosovo (including both Serbs and Albanians).

On 19 December 2009, the European Union approved liberalisation of the Schengen visa regime with Serbia, which implies that citizens of Serbia can enter the Schengen area without a visa for short visits. The only condition is possession of a new biometric passport from the Republic of Serbia (instead of an old FRY one). However, there is a shortcoming. The visa liberalisation regime does not apply for citizens of Serbia with residence in Kosovo. A special unit within the Ministry of the Interior (Coordination Office) issues passports for those citizens, but those passports

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<sup>91</sup> Interview at the Ministry of Interior on 25 January 2009.

<sup>92</sup> For a full report on Kosovo citizenship see Krasniqi (2010).

cannot be used for free entry into the Schengen area. While this may have been a result of a compromise between the EU and the Serbian government, it raises the issue of the citizenship policy of the Serbian government towards Kosovo. The Serbian state still considers Kosovo to be a part of its territory and there are no apparent, legally defined differences amongst the citizens of Serbia regarding their residence. However, the Serbian government agreed to discriminate against citizens of Serbia with residence in Kosovo – including both Albanians and Serbs living there – by refusing their access to visa liberalisation regime and thereby failing to secure the same citizenship rights for all citizens.

## 5 Conclusions

This report indicates that citizenship in Serbia tended to be considerably elusive and ambiguous throughout history and that it remains so even today. One of the reasons is the lack of a consolidated nation and state and recurring regional political and ethnic turmoil. Indeed, Serbia is part of a broader ‘constitutional mosaic’ based on continuous fragmentation, disintegration and partial reintegration, as well as overlapping citizenship regimes (Shaw 2010: 2). In broader terms, it is always difficult to define a consolidated state and identities (Verdery 1998), but in the context of Serbia the elusiveness of the nation state has a direct relevance for citizenship, thus often producing problematic outcomes. Hence, some of the most important provisions of laws on citizenship in Serbia are those transitional ones, as well as international agreements, that define the pool of citizens and the relationship between them and other residents.

The current law is liberal, takes care of statelessness, and provides for the possibility of multiple citizenships. A plethora of other convenient paths to citizenship reveals its ethnic character. It is based on a new political paradigm that aims to reconcile between the multi-ethnic state, the civic notion of citizenship, and the promotion of an ethnic Serb kin state. However, the current citizenship and constitutional regime fails in responding precisely to the question of *who* are current and potential citizens and *what* and *where* is that state with which the citizens are supposed to have a relationship. To illustrate this confusing situation, theoretically speaking, a large number of people from the Balkan region could become citizens of Serbia, but at the same time, Serbia discriminates against its citizens with residence in Kosovo that, in turn, it claims is merely part of Serbia. In sum, we can expect that the issues surrounding an ever-increasing pool of persons with dual and multiple citizenship and state allegiances, the status of Kosovo residents, the and continued ethnic consolidation of the Serb/ian nation will remain prominent in the short and medium term.

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